



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

WAGGONER CARR
ATTORNEY GENERAL

February 17, 1966

Mr. Harry B. Kelton
Director
Texas National Guard Armory Board
West Austin Station
Austin, Texas 78703

Opinion No. C-614

Re: Whether certain funds appropriated to the Armory Board can be legally expended for constructing a building addition for the Adjutant General's Department at Camp Mabry under the provisions of Section 6 Paragraph (7) of Article 5767 V.C.S., and related questions.

Dear Mr. Kelton:

We have your letter of recent date requesting our opinion relative to the above captioned matter, which letter reads as follows:

"As indicated by the enclosed certified copy of an Armory Board resolution of January 29, 1966 the Board has made \$235,000.00 available for the construction of a two-story building addition for the Adjutant General's Department at Camp Mabry, provided the expenditure of such funds is approved by the Executive Budget Office, the Legislative Budget Board and the Attorney General of Texas.

"In the event the funds appropriated to the Armory Board can be legally expended for constructing a building addition on land acquired by the Board under the provisions of Paragraph (7), Section 6, Article 5767, Chapter 690 of the General and Special Laws of Texas, 59th Legislature, Regular Session, 1965, would the Board be required to lease

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such property to the State of Texas or would the Board be authorized to transfer such property to the State of Texas."

The resolution attached discloses that the funds made available were derived from the sale of property at Camp Wolters and Hulen.

House Bill No. 410, (Acts 1965, 59th Legislature, chapter 690, page 1601) amended Chapters 1 and 2, Title 94, Revised Civil Statutes of Texas, to read in part as follows:

"Article 5767. Texas National Guard Armory Board.

"Express powers

"Section 6. The Board possesses but is not limited to the following powers:

". . .

"(7) To construct buildings on any of its real property, whether held in fee simple or otherwise, and to furnish and equip the same and to hold, manage and maintain all of said property and to lease to the State of Texas, in the same manner as hereinafter provided with respect to other property, the buildings, and the sites thereon situated, which it may construct at Camp Mabry, Camp Hulen and Camp Wolters, and to lease and sublease, convey and exchange, . . ." (Emphasis added).

Section 7 of Article 5767 provides as follows:

"Section 7. As and when any of the property owned by the Board shall be fully paid for, free of all liens, and all debts and other obligations incurred in connection with the acquisition or construction of such property have been fully paid, the Board may donate, transfer, and convey such property,

by appropriate instruments of transfer, to the State of Texas, and such instruments of transfer and conveyance shall be kept in the custody of the Adjutant General's Department."

House Bill No. 12 of the 59th Legislature, which is the Appropriation Bill for the State of Texas for the biennium September 1, 1965 to August 31, 1967, at page III-18 provides as follows:

"There is hereby appropriated to the Texas National Guard Armory Board all funds which have been or may be derived from sales of state-owned National Guard Camps and other property owned by the Texas National Guard Armory Board and of land, improvements, buildings, facilities, installations and personal property in connection therewith, as authorized by Senate Bill No. 279, Acts, 1963, Fifty-eighth Legislature. Such funds shall be expended by the Texas National Guard Armory Board for the use and benefit of the Texas National Guard for one or more of the following purposes: (1) As a participating fund in the construction of armories financed in part by the United States Government; or (2) As a construction fund to be used by the Armory Board; or (3) As a debt servicing fund as provided in Senate Bill No. 279, Acts, 1963, Fifty-eighth Legislature, Regular Session. Provided, however, that all such funds as are not actually used for the purposes hereinbefore specified shall remain on deposit with the State Treasurer to the credit of the Texas National Guard Armory Board for the use and benefit of the Texas National Guard, their successors or components, as provided in Senate Bill No. 279, Acts of the Fifty-eighth Legislature, 1963. There is hereby reappropriated to the Texas National Guard Armory Board all sums refunded to said Board from any source when such funds were originally expended for any of the purposes enumerated in Items 1 through 5 above. Such reappropriated

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funds may be expended for any of the purposes enumerated in Items 1 through 5 above."
(Emphasis added).

It appears from a reading of House Bill No. 410 that the same recodifies all of the laws pertaining to the Texas National Guard and Armory Board.

In view of the provisions of subdivision 7 of Section 6 of Article 5767, Vernon's Civil Statutes, as amended, and the fact that the Legislature has appropriated funds derived from sales of National Guard Camps and other property owned by the Armory Board to be expended "as a construction fund", we are of the opinion that to make such portion of the Appropriation Bill effective, it would include the expenditure of funds for the construction in question.

It is therefore our opinion that subject to the approval of the Executive Budget Office and the Legislative Budget Board and the Attorney General of the State of Texas, that the funds available for the construction of a two-story building addition for the Adjutant General's Department at Camp Mabry can be legally expended for constructing a building addition on lands acquired by the Board under Paragraph (7), Section 6, Article 5767, Chapter 690 of the General and Special Laws of Texas, 59th Legislature, Regular Session, 1965.

If the building to which the two-story building addition is attached for the Adjutant General's Department at Camp Mabry is under lease to the State of Texas, then this addition should be leased to the State of Texas, under the same terms and conditions as contained in the original lease, as this building would upon completion become a part of the original building; however, if this building addition is constructed on property owned by the Board and such addition becomes a part of a building that is fully paid for, free of all liens and all debts and other obligations incurred in connection with the construction, then the Board may donate, transfer, and convey such property, by appropriate instruments of transfer, to the State of Texas, and such instruments of transfer and conveyance shall be kept in the custody of the Adjutant General's Department as provided for in Section 7 of Article 5767, Revised Civil Statutes of Texas.

SUMMARY

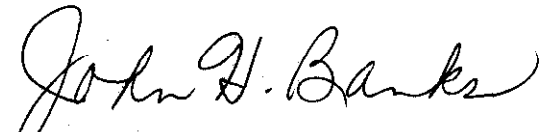
1. Funds appropriated to the Texas National Guard Armory Board can be legally expended for constructing an addition to an existing building at Camp Mabry, subject to the approval of the Executive Budget Office, Legislative Budget Board and the Attorney General of the State of Texas, under the provisions of Section 6, Paragraph (7), Article 5767, Revised Civil Statutes of Texas.

2. When such addition has been completed to the existing building at Camp Mabry and if such original building is under lease to the State of Texas, then this building addition should be leased to the State under the same terms and conditions as contained in the original lease; if such building addition is constructed on property owned by the Armory Board and such addition becomes a part of a building that is fully paid for, free of all liens, debts and other obligations incurred in connection with the construction, then the Armory Board is authorized to donate, transfer and convey such property by appropriate instruments of transfer, to the State of Texas, as provided for in Section 7 of Article 5767, Revised Civil Statutes of Texas.

Yours very truly,

WAGGONER CARR
Attorney General

By:


John H. Banks
Assistant

JHB:sj:ra

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APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
Pat Bailey
Alan Minter
Marvin Sentell
Harry Gee

APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. Wright